

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ANTHONY C. REA and SUZANNE REA,

Plaintiffs-Appellees,

v

FIVEGEES INVESTMENTS, LLC,

Defendant/Third-Party Plaintiff-  
Appellant,

and

WAYNE COUNTY TREASURER,

Defendant,

and

BANK ONE NATIONAL, Formerly Known as,  
NBD BANK,

Third-Party Defendant-Appellee,

and

RITE AID OF MICHIGAN, INC.,

Third-Party-Defendant.

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Before: Fort Hood, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

Defendant Fivegees Investments, LLC, appeals an order vacating a foreclosure judgment and voiding Fivegees' respective quitclaim deeds to two properties previously owned by plaintiffs. The properties had been forfeited to the Wayne County Treasurer (Wayne County) because of plaintiffs' failure to pay taxes assessed against the properties, and the properties were later sold to Fivegees at auction. As a result of Wayne County's failure to strictly comply with the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, the circuit court concluded that

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plaintiffs' due process rights had been violated and that the resulting tax sale was void. We affirm.

Fivegees first argues that plaintiffs had no right to bring an independent suit against it under MCR 2.612(C)(3) because legal remedies were available to plaintiffs under MCL 211.78l(1) and (2). We disagree. This Court has recently held that a circuit court maintains subject-matter jurisdiction over a previously issued foreclosure judgment and may modify or vacate the judgment under MCR 2.612(C) if a property owner was not afforded minimum due process. *In re Wayne Co Treasurer*, 265 Mich App 285, 300; 698 NW2d 879 (2005). In that regard, if an interested party was not afforded due process, the subsequent foreclosure sale is invalid. *Id.* at 293, citing MCL 211.78i(2). In addition, plaintiffs were allowed to consolidate the foreclosure action with the instant action. In that regard, the claim was no longer a separate, independent action against Fivegees.

Fivegees next argues that the circuit court abused its discretion in consolidating the initial foreclosure action with plaintiffs' subsequent, independent action to set aside the foreclosure sale. Further, Fivegees argues that the circuit court improperly treated plaintiffs' motion for summary disposition as a motion to set aside the foreclosure judgment. We disagree. A circuit court's decision as to consolidation is reviewed for an abuse of discretion. *Bordeaux v Celotex Corp*, 203 Mich App 158, 163; 511 NW2d 899 (1993).

MCR 2.505(A)(2) provides that a court may consolidate actions involving "a substantial and controlling common question of law or fact . . . ." Here, unquestionably, the initial foreclosure action brought by Wayne County involved the same provisions of the GPTA and same facts in plaintiffs' complaint to set aside the foreclosure judgment. Thus, no abuse of discretion occurred. As to Fivegees' argument about the nature of the motion, a court is not bound by a party's label for a motion, which would place form over substance. *Kostyu v Dep't of Treasury*, 170 Mich App 123, 130; 427 NW2d 566 (1988). In that regard, while plaintiffs brought a motion for summary disposition to dismiss Fivegees' counter-complaint, plaintiffs pled for relief against the foreclosure judgment and against the sale to Fivegees. Moreover, plaintiffs pled for the same relief in their motion for injunctive relief. Fivegees had an opportunity to respond to plaintiffs' motions and did so. Therefore, the circuit court did not err in treating the motions as a motion to set aside the foreclosure judgment.

Fivegees finally argues that the circuit court erred as plaintiffs were afforded due process of law. However, because Fivegees did not specifically assert in its statement of questions presented that plaintiffs had been afforded due process, this issue has been waived. *English v Blue Cross Blue Shield of Michigan*, 263 Mich App 449, 459; 688 NW2d 523 (2004). Nevertheless, we disagree with Fivegees' argument.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Collins v Comerica Bank*, 468 Mich 628, 631; 664 NW2d 713 (2003). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Summary disposition should be granted under MCR 2.116(C)(10) if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Babula v Roberson*, 212 Mich App 45, 48; 536 NW2d 834 (1995). Further, whether a party has been afforded due process is a question of law

that we review de novo. *Hanlon v Civil Service Comm*, 253 Mich App 710, 717; 660 NW2d 74 (2002).

Due process protects a real estate owner's interest in property. *Dow v Michigan*, 396 Mich 192, 204; 240 NW2d 450 (1976). Due process requires that an owner of property be given proper notice and an opportunity to contest a state's claim to take the property for the owner's failure to pay taxes. *Id.* at 196. Notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 314; 70 S Ct 652; 94 L Ed 865 (1950). However, personal service is not required; rather, mailed notice is adequate. *Dow, supra* at 211.

As to the collection of taxes, tax statements are to be mailed to the taxpayer's last known address as indicated on the tax roll. MCL 211.44(1), accord *Smith v Cliffs on the Bay Condo Ass'n*, 463 Mich 420, 429; 617 NW2d 536 (2000). If taxes remain unpaid, county treasurers are authorized to seize tax-delinquent property and sell it at auction to satisfy delinquent taxes. *Republic Bank v Genesee Co Treasurer*, 471 Mich 732, 737; 690 NW2d 917 (2005). The GPTA includes an extensive set of procedures for notice in the tax sale process. *Smith, supra* at 428. However, whether notice is adequate is governed by state and federal due process standards and not by specific provisions of the act. *Republic Bank, supra* at 737, citing MCL 211.78(2). "In short, notice must be sent to an address reasonably calculated to apprise the object of notice of the pending proceedings, and this requirement must be evaluated in the context of affording the object of notice minimal due process." *Id.* at 739. And if a municipality is aware of a property owner's true address, mailed notice should be sent to that address. See *Smith, supra* at 429.

In this case, the circuit court found that Wayne County "fail[ed] to strictly comply with the [GPTA] notice provisions." As a result of this failure to strictly comply, the court reasoned that the foreclosure judgment should be set aside. However, strict compliance with the GPTA notice provisions is not required to satisfy due process. *In re Wayne Co Treasurer, supra* at 296. Nevertheless, plaintiffs' due process rights were violated.

As to the initial \$6.13 assessed against old Tax no. 457-000, the bill was sent to John Kesik Properties, Inc., apparently a former owner. And as to the initial \$14.52 assessed against old Tax no. 430-300, again, the drain assessment was erroneously sent to Tomei, the former owner. However, the city of Westland was aware that plaintiffs were the current owners and had plaintiffs' current address in its possession but never sent notice to them. In that regard, plaintiffs were not afforded due process because the assessment was never properly assessed as it was never sent to plaintiffs, the true owners. MCL 211.44(1), accord *Smith, supra* at 429. Moreover, the city of Westland assessed the tax against the previous tax numbers, but was aware that these numbers were no longer valid as the properties had been consolidated by the city and new numbers were created in 1998. Under the circumstances, plaintiffs' due process rights were violated because of the lack of adequate notice of the assessments.

Affirmed.

/s/ Karen M. Fort Hood  
/s/ David H. Sawyer  
/s/ Patrick M. Meter